

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:)
)
NATIONAL FORGE COMPANY, *et, al.*)
)
Debtor.)
)
OFFICIAL COMMITTEE OF)
UNSECURED CREDITORS OF)
NATIONAL FORGE COMPANY,)
)
Plaintiff)
)
And)
)
OFFICIAL COMMITTEE OF RETIREES)
OF NATIONAL FORGE COMPANY,)
)
Intervenors)
) C.A. No. 04-21 ERIE
v.)
)
E. ROGER CLARK, *et al.*)
)
Defendants)

**MOTION TO DISMISS COUNT VIII OF THE COMPLAINT
PURSUANT TO FED. R. CIV. P. 41(a)(2)**

AND NOW, comes the Official Committee of Unsecured Creditors of National Forge Company (the “Committee”), by and through its undersigned counsel, and hereby file this Motion To Dismiss Count VIII of the Complaint Pursuant to Fed.R.Civ.P. 41(a)(2), and in support thereof states as follows:

1. On June 9, 2006, this Court entered an Order granting Summary Judgment (the “June 9th Order”) as to Counts I through VII of the Committee’s Eight Count Complaint in favor of all Defendants and granting Summary Judgment as to Count VIII of the Complaint in favor of

all Defendants except E. Roger Clark, Maurice J. Cashman, Dana Beyeler, Robert A. Kaemmerer and Ashtok Khare (referred to hereinafter as the “Remaining Defendants”).

2. As a result of the entry of the June 9th Order, the only remaining Count of the Committee’s Complaint (Count VIII) asserts claims against the Remaining Defendants for Breach of Fiduciary Duty under Delaware law.

3. By Order dated July 9, 2006, this Court entered a Final Judgment pursuant to Fed.R.Civ.P. 54 as to its June 9th Order.

4. On July 12, 2006, the Committee filed a Notice of Appeal with respect to this Court’s June 9th Order (the “Appeal”).

5. In light of this Court’s ruling in its June 9th Order dismissing Counts I through VII of the Complaint, the Committee has determined it is in the best interests of the Debtor’s estate and its creditors to discontinue prosecution of Count VIII of the Complaint. The Committee will continue to prosecute the Appeal of this Court’s June 9th Order.

6. The Committee has conferred with Counsel for the Official Committee of Retirees and each of the Defendants and they have agreed and consented to the dismissal of Count VIII with prejudice.

WHEREFORE the Committee respectfully requests that this Court grant the Committee's Motion to Dismiss Count VIII of the Complaint, and for any such other relief as the Court may deem appropriate.

Respectfully submitted,

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